

Cause No. **352 238801 09**

STATE OF TEXAS,
Plaintiff

IN THE DISTRICT COURT

v.

AUSTIN HILTON *dba* FX SUPPLEMENTS
.COM and *dba* ACAIBERRYMAXX.COM;
and HILTON HG, LTD.

____ JUDICIAL DISTRICT
TARRANT COUNTY, TEXAS

**AGREED FINAL JUDGMENT AND PERMANENT INJUNCTION AS TO AUSTIN
HILTON d.b.a. FX SUPPLEMENTS.COM and d.b.a. ACAIBERRYMAXX.COM and
HILTON HG, LTD.**

PLAINTIFF, the State of Texas, acting by and through the Attorney General of Texas, Greg Abbott, and Defendants AUSTIN HILTON d.b.a. FX SUPPLEMENTS.COM and d.b.a. ACAIBERRYMAXX.COM and HILTON HG, LTD. announce to the Court that all matters of fact and things in controversy between them have been fully and finally compromised and settled. The parties have consented to the entry of this Agreed Final Judgment and Permanent Injunction as to AUSTIN HILTON d.b.a. FX SUPPLEMENTS.COM and d.b.a. ACAIBERRYMAXX.COM and HILTON HG, LTD. prior to the taking of any testimony in this case, and jointly move that the Court enter this Judgment.

The Court, after reading the pleadings and stipulations of the parties and it appearing to the Court that all parties agree to and have approved its entry of this Agreed Final Judgment and Permanent Injunction, makes the following findings and orders under the provisions of the Texas Deceptive Trade Practices-Consumer Protection Act ("DTPA"), Tex. Bus. & Com. Code § 17.41 et seq.

I. STIPULATIONS

1. It is stipulated and agreed by the parties that all liability is expressly denied herein by Defendants.
2. The parties consent and agree to the entry of this Judgment.
3. The parties stipulate that Plaintiff's execution of this Judgment does not constitute an approval by the Plaintiff of Defendants' business practices.
4. Defendants also stipulate that Defendants' indebtedness to the State of Texas for civil penalties, identified in paragraph 29, for violations of the Texas Deceptive Trade Practice Act and the Texas Business Corporations Act having been found by this court to constitute a civil fine or penalty to and for a governmental unit and not compensation for actual pecuniary loss, would be a debt that would be nondischargeable in a subsequently filed bankruptcy proceeding under either Chapter 7 or Chapter 11 and that, in the event a voluntary or involuntary Chapter 7 or Chapter 11 bankruptcy proceeding is commenced against debtors, the debtors stipulate that they shall not contest either directly or indirectly future attempts, if any, by the State of Texas to have such debt declared nondischargeable in accordance with Title 11 United States Code Section 523(a)(7).
6. Defendants AUSTIN HILTON d.b.a. FX SUPPLEMENTS.COM and d.b.a. ACAIBERRYMAXX.COM and HILTON HG, LTD. stipulate that they have ceased selling the Acai Berry Maxx and that they will not sell the acai berry product in the State of Texas at any future time.
7. Defendants AUSTIN HILTON d.b.a. FX SUPPLEMENTS.COM and d.b.a. ACAIBERRYMAXX.COM d.b.a. HILTON HG, LTD stipulate that they will refund all money requested by consumers for purchases of acai berry maxx that was not timely received

by consumers. Defendants will also refund money requested by consumers for the acai berry products that were debited automatically by charge card or debit. Moreover, Defendants will maintain a customer service web site to process and fulfill refund requests for the six month period following the entry of this Agreed Final Judgment and Permanent Injunction.

II. DEFINITIONS

8. The following definitions shall be used in construing this Judgment:
- A. "Consumer" means an individual, partnership, corporation, or entity of any kind, including this state, or a subdivision or agency of this state who seeks or acquires, by purchase or lease, any goods or services;
 - B. "Defendants" mean AUSTIN HILTON d.b.a. FX SUPPLEMENTS.COM and d.b.a. ACAIBERRYMAXX.COM and HILTON HG, LTD. as well as their successors, assigns, officers, agents, subcontractors, servants, present and former employees, corporations and any other persons in active concert or participation with them;
 - C. "Advertising" means any oral, written, graphic or pictorial statement or representation, including but not limited to testimonials, endorsements, or other Third party representations, regardless of the medium of communication employed, for the purpose of inducing, or they are likely to induce, directly or indirectly, the purchase of Defendants' products; and includes but is not limited to product packages, labels, labeling, product inserts, product literature and internet sites;
 - D. "Billing Information" means any information that enables an entity to charge a consumer's account, such as a credit card, checking, savings, share or similar account, utility bill, mortgage loan account or debit card.

- E. "Charge" means any amount charged or debited to a consumer's credit card, checking, savings, share or similar account, utility bill, telephone bill, mortgage loan account, debit card, or any similar form of collecting money from a consumer.
- F. "Clear and Conspicuous" statement, or a statement presented "Clearly and Conspicuously" means a statement or communication, written or oral, presented in such font, size, color, location, audibility and contrast against the background in which it appears, compared to the other matter with which it is presented, so it is easily noticed and readily understood. If such statement or communication modifies, explains, or clarifies other information with which it is presented, it must be presented in close proximity to such other information and in the same manner (audible or visual) so it is easily noticed and readily understood. In addition, the term means that:

- (1). With respect to any promotional materials communicated through any Non-print medium (including such formats as telephone, television, radio, CD-ROM, DVD, other electronic, magnetic, or interactive media, and including the Internet and online services), audio disclosures shall be delivered in a volume and cadence sufficient to be easily heard and readily understood, and video disclosures shall be of a size and shade, in contrast with the background with which it appears, and shall appear on the screen for a period of time sufficient to make them easily read and readily understood.
- (2) In addition to the foregoing, in media such as the Internet, online services, or other interactive software, the disclosures shall also be

unavoidable and shall require the consumer to affirmatively assent or click “OK” to the disclosures prior to the consumer being requested to agree to incur any obligation, financial or otherwise.

- G. “Free-to-Pay Conversion” means, in an offer or agreement to sell or provide any goods or services, a provision under which a customer receives an initial Product or service for free, or for free for a period of time, but then will incur an obligation to pay for the product or service, or additional product(s) or service(s), if the customer does not take affirmative action to cancel before the end of that period.
- H. “Continuity Plan” means a sales promotion technique that encourages consumers to continue to consume goods or services.
- I. Including means “including without limitation.”
- J. “Labeling” means all labels and other written, printed, or graphic matter upon any containers or wrappers or any other written Promotional materials, such as sales brochures, leaflets, or other written, printed, or graphic matter, which accompanies a Product.
- K. “Membership” means any arrangement whereby persons who purportedly agree to the arrangement (often called “members”) receive specified benefits over a period of time, including but not limited to, free shipping and handling, discounts on goods and services, guaranteed prices, and expedited processing of orders.
- L. “Negative Option Feature” means, in an offer or agreement to sell or provide any goods or services, a provision under which the consumer’s silence or failure to reject goods or services or to cancel the agreement within any certain time period is treated

by the seller or provider as if the consumer has given the seller or provider the right to send or provide, and charge the consumer for, future goods or services. Agreements with a Negative Option Feature include, but are not limited to: (I) Free-to-Pay conversion plans; (ii) continuity plans.

- M. Product or products means acai berry or any other product item marketed and sold by Defendants.
- N. Promotion means all representations and activities (including, but not limited to, direct contact with consumers) which advertise or result in a sale of any acai berry, or any other product marketed by Defendants
- O. "Renewal" means an extension beyond the original term of a Membership or an agreement to receive goods or services that are offered on a periodic basis.
- P. "Third Party" means (a) any entity that is not owned or controlled by Defendants, and (b) any person who is not acting in his or her capacity as an officer or employee of Defendants or any entity owned or controlled by Defendants.

III. FINDINGS

- 9. **THE COURT FINDS** that this Court has jurisdiction through the Texas Deceptive Trade Practices-Consumer Protection Act ("DTPA") over the subject matter and over all parties to the action.
- 10. **THE COURT FINDS** that Plaintiff's Original Petition states a claim upon which relief can be granted against Defendants, and Plaintiff has authority to seek the relief it has requested.
- 11. **THE COURT FINDS** that venue of this matter is proper in Tarrant County because Defendants conducted business in Tarrant County and a substantial part of the events or

omissions giving rise to this law suit occurred in Tarrant County.

IV. PERMANENT INJUNCTION

12. **IT IS ORDERED THAT** Defendants, AUSTIN HILTON d.b.a. FX SUPPLEMENTS.COM and d.b.a. ACAIBERRYMAXX.COM and HILTON HG, LTD., their officers, agents, servants, employees, and attorneys and any other person or entity acting in concert or participation with them shall be prohibited from engaging in the following acts and practices, including:

A. Prohibited Marketing and Claims

- 12.1. Advertising, marketing, or selling Acai Berry Maxx or other acai berry products;
- 12.2. Making deceptive, misleading, and/or false claims regarding the ability of an acai berry product or any other product's ability to diagnose, cure, prevent, or mitigate a disease;
- 12.3. Advertising or representing, directly or indirectly, that any product can diagnose, cure, treat, prevent or mitigate any disease or abnormal condition associated with a natural state or process unless Defendant's application with respect to such product has been approved as a drug under Section 505 of the Federal Food Drug and Cosmetic Act (21 U.S.C. §355).
- 12.4. Making unauthorized and/or prohibited nutrient content claims regarding any other product;
- 12.5. Failing to list the Distributor's name and address on the Information Panel Portion of the label on any product; and/or
- 12.6. Failing to clearly and conspicuously place, in any Advertising that contains claims

that a product supports the structure or function of the body, including but not limited to product packages, labels, labeling, product inserts, brochures and internet sites for Defendants' Products, as may also be required by the Food and Drug Administration regulations, the following disclosure, set apart from other text in the advertising and within a bordered box: "This statement has not been evaluated by the Food and Drug Administration. This product is not intended to diagnose, treat, cure, or prevent any disease." In any visual advertising, including but not limited to television advertising, this disclosure shall be presented in such font, size, color and contrast against the background in which it appears compared to the other matter with which it is presented, so it is easily noticed and readily understood. In addition, in product packaging, print advertising, or other print material, this disclosure, if it does not appear adjacent to the claims it modifies, must also appear in boldface type. Notwithstanding the requirement in the definition of "Clear and Conspicuous" in Paragraph 8. F.

B. Prohibited Advertising Practices and the Use of the Term "Free"

13. **IT IS FURTHER ORDERED THAT** Dependants, their employees, agents and servants are hereby permanently restrained and enjoined from.

13.1. Using the word(s) "free," "free sample," "free trial," "no obligation," or other words of similar import in television, radio, internet or any other advertising of Defendants' products, without clearly and conspicuously disclosing in close proximity to the word(s), the following:

(a) That, if true, the consumer must pay any shipping and handling charges (such

charges not being excessive in amount); and

- (b) That, if true, the consumer may be required to enroll in a program with a Negative Option Feature and that such Negative Option Feature may result in additional charges to the consumer.

13.2. Using the word(s) “free,” “free sample,” “free trial,” “no obligation,” or other words of similar import in Advertising other than television or radio, without clearly and conspicuously disclosing in close conjunction with the word(s) all terms and conditions associated with the use of the word(s).

13.3. Using the word(s) “free,” “free sample,” “free trial,” “no obligations,” or other words of similar import in violation of the Federal Trade Commission’s Guide Concerning the Use of the Word “Free,” 16 CFR Part 251 or any applicable law of the State of Texas.

13.4. Using the words “Get your free trial, order in the next _____ minutes”, “limited time,” “while Supplies last,” “this week only,” or other words of similar import, unless such limitations are actually applied.

13.5. Making any representations that are false, deceptive or misleading, or failing to clearly and conspicuously disclose any material fact.

C. Mandatory Disclosures

14. **IT IS FURTHER ORDERED THAT** Dependants, their employees, agents and servants are hereby permanently restrained and enjoined from failing to disclose, truthfully, and clearly and conspicuously, before obtaining a consumer’s express authorization to bill or charge the consumers for any goods or services, all material terms and conditions for the

purchase of any such goods or services, including but not limited to:

- 14.1. The quantity of any goods or services that are the subject of the sales offer.
- 14.2. All material restrictions, limitations, or conditions to purchase, receive or use the goods or services that are the subject of the sales offer.
- 14.3. All policies regarding refunds, guarantees, cancellations, exchanges and repurchases, including any policy that refunds will not be made, or that cancellations or exchanges will not be accepted.
- 14.4. The number of payments that must be made (if more than one), the dates or time periods when the payments will be required or charged, the amount of each payment, and the total cost.
- 14.5. If true, that Billing Information that the seller already possesses, either because the customer previously provided it to the seller, or the seller obtained it from another source, will be used to bill or charge the consumer.
- 14.6. If the offer includes a Negative Option Feature or Membership, all material terms and conditions of the Negative Option Feature or Membership, including but not limited to, the fact that the consumer's account will be automatically charged unless the consumer takes an affirmative action to avoid the charges, when the charges will be submitted for payment, the specific steps the consumer must take to avoid the charges, when a consumer cancellation request must be received by the Defendants, and a telephone number or address where the consumer's cancellation request should be directed. With respect to the first such automatic shipment or automatic renewal Defendants must identify the specific date by which the consumer must take an

affirmative action to avoid the charge.

D. Mandatory Disclosures with Product Shipments

15. **IT IS FURTHER ORDERED THAT** Defendants, their employees, agents and servants are hereby permanently restrained and enjoined from:

15.1. Failing to provide, prior to charging the consumer for any goods or services supplied pursuant to a Negative Option Feature, a written document clearly and conspicuously disclosing all material terms and conditions of the sale including, but not limited to the fact that the consumer is currently enrolled in Defendants' Negative Option Feature, that the consumer's account will be charged for the first and all successive product shipments under the Negative Option Feature unless the consumer cancels his or her enrollment in the Negative Option Feature, the specific steps the consumer must take to cancel enrollment in the Negative Option Feature, including a telephone number, physical address, or email address where a notice to cancel enrollment may be directed and the amount of time the consumer has to submit such notice to the Defendants. The disclosure document required under this Paragraph 15 must be a separate, stand-alone document and not contain any sales or promotional material and shall be conspicuously placed within the shipment so as to be unavoidable. The document shall also provide clear and conspicuous notice that the consumer has the right to a refund, along with instructions on how to exercise such right; provided that Defendants may set terms and conditions for refund policies (such as a reasonable time limit within which consumers may request a refund, or that shipping and handling charges will not be refunded), only if Defendants have clearly and

conspicuously disclosed such terms with the offer.

- 15.2. Failing to provide consumers the advertised trial period following the receipt of the introductory or free shipment which enrolls the consumer in a Negative Option Feature, and at least for the advertised trial period following the receipt of any succeeding shipment under a Negative Option Feature, within which to cancel the continuity program and to avoid any future charges.

E. Guarantee and Refund Promises

16. **IT IS FURTHER ORDERED THAT** Defendants, their employees, agents and servants are hereby permanently restrained and enjoined from:

- 16.1. With respect to any good or service offered with a money-back guarantee by Defendants, failing to submit a request to the appropriate credit card processor or mail a check if appropriate, within fourteen (14) business days of Defendants' receipt of a refund request, a full refund of the purchase price of the good or service, including any shipping costs, insurance, handling, or any other fee or charge paid by the consumer; provided, however, that Defendants may set terms and conditions for such money-back guarantee (such as a reasonable time limit within which consumers may request a refund, or that shipping and handling charges will not be refunded), only if Defendants have clearly and conspicuously disclosed such terms and conditions in close proximity to the money-back guarantee offer.
- 16.2. Failing to honor any representations made by Defendants regarding refunds.
- 16.3. Failing to clearly and conspicuously disclose, at the time a consumer makes a new order, modifies his/her order, or requests a refund, all the terms and conditions that

may impact any refund policy or money-back guarantee that the Defendants are providing. Such disclosure shall be made by the Defendants prior to accepting any modified or new order by the consumer.

- 16.4. Failing to honor a request that Defendants receive to cancel enrollment in a Continuity Program, when such a request is consistent with clearly and conspicuously disclosed terms and conditions of the Continuity Program. **Provided, however,** that if Defendants receive or discover credible evidence that any of their agents, servants, representatives, employees, and all persons or entities in active concert or participation with any of them who receive actual notice of this Order by personal service or otherwise, have made any representation to a consumer during a transaction that is inconsistent with or contradicts any of the disclosures required by this Order, Defendants must offer to the consumer an appropriate refund and cancellation of his or her enrollment in the Continuity Program. If a consumer asserts, directly or through a third party, without any evidence, that a representation inconsistent with or contradicting any of the disclosures required by this Order was made, the Defendants, unless they can produce evidence to the contrary, must offer to the consumer an appropriate refund and cancellation of his or her enrollment in the Continuity Program.

F. Maintaining Accessibility to Telephone Personnel

17. **IT IS FURTHER ORDERED THAT** Defendants, their employees, agents and servants are hereby permanently restrained and enjoined from failing to ensure consumer accessibility to personnel manning any telephone number that Defendants provide for canceling any order

for products, goods or services, for requesting refunds, or for effectuating any money-back guarantee for any products being sold. For purposes of this Paragraph 17, "consumer accessibility" shall mean that, under normal operating conditions, at least ninety percent (90%) of all calls placed during each consecutive three (3) month period to such telephone numbers shall be connected to Defendants' personnel no later than nine (9) minutes after the call is answered. In addition, for purposes of this Paragraph 17, "calls placed" shall exclude any call placed by a consumer if a consumer voluntarily disconnects within twenty (20) seconds. Further, Defendants shall ensure that all telephone calls placed to such numbers are answered within four (4) rings and that if live personnel are not immediately available to conduct business with the consumer when the phone is answered, Defendants must deliver over the telephone a Clear and Conspicuous recording that live personnel should be available to assist the consumer within nine (9) minutes. Defendants shall provide documents evidencing compliance with this Paragraph 17 within five (5) business days after receipt of any written request from Plaintiff for such verification. This Paragraph 17 shall become effective on the first day of the third full month following the date that this Agreed Final Judgment and Permanent Injunction has been signed by the court.

G. Responding to Consumer Complaints

18. **IT IS FURTHER ORDERED THAT** Defendants, their employees, agents and servants are hereby permanently restrained and enjoined from failing to investigate and promptly resolve any consumer complaint or request for refund, in accordance with Paragraph 16 of this Agreed Final Judgment and Permanent Injunction, received by Defendants and to notify the consumer of the resolution of the complaint or request and the reason thereof.

H. Wholesalers, Distributors, and Resellers

19. **IT IS FURTHER ORDERED THAT** Defendants, their employees, agents and servants are hereby permanently restrained and enjoined from:

19.1. Including in any contract with any wholesaler, distributor, or known reseller of Defendants' products terms and conditions that conflict with the requirements of this Agreed Final Judgment and Permanent Injunction.

19.2. Providing to, or approving the use of, marketing materials or information, labeling, product packaging or package inserts, or products, to wholesalers, distributors, and known resellers of Defendants' products that do not comply with the requirements of this Agreed Final Judgment and Permanent Injunction.

H. Distribution of Agreed Final Judgment and Permanent Injunction by Defendants

20. **IT IS FURTHER ORDERED** that, for a period of five (5) years from the date of entry of this Agreed Final Judgment and Permanent Injunction, Defendants must each:

20.1 Provide a copy of this Agreed Final Judgment and Permanent Injunction to and obtain a signed and dated acknowledgment of receipt from each of its officers and directors;

20.2 Provide a summary of this Agreed Final Judgment and Permanent Injunction, as set forth in Exhibit "A," to, and obtain a signed and dated acknowledgment of receipt from:

(a) All sales and marketing personnel and all personnel involved in responding to consumer complaints or inquiries, whether such persons are designated as employees, consultants, independent contractors or otherwise, of any of the

Defendants or of any business entity owned or controlled, directly or indirectly, or managed, by any of the Defendants; and

(b) Each Partner of any of the Defendants; provided that each of the Defendants must deliver the copy of the Agreed Final Judgment and Permanent Injunction or summary of the Agreed Final Judgment and Permanent Injunction, as appropriate, to current personnel and Partners within thirty days after the date of entry of the Agreed Final Judgment and Permanent Injunction, and to future personnel and Partners within thirty days after the person assumes such position or responsibilities.

20.3 Maintain for a period of five (5) years after creation, and, within fifteen (15) days of receipt of a written request, make available to representatives of Plaintiff, the original signed and dated acknowledgments of the receipt of the Agreed Final Judgment and Permanent Injunction or summary of the Agreed Final Judgment and Permanent Injunction, as required in Paragraph 20.2(a) and (b). above. Provided, however, that such acknowledgments received by Defendants may be stored in an electronic format.

I. Plaintiff's Authority to Monitor Compliance

21. **IT IS FURTHER ORDERED** that Plaintiff is authorized to monitor compliance with this Agreed Final Judgment and Permanent Injunction by all lawful means, including but not limited to the following means:

21.1 Plaintiff is authorized, without further leave of court, to obtain discovery from any person in the manner provided in the rules and statutes of the State of Texas, for the

purpose of monitoring and investigating compliance with any provision of this Agreed Final Judgment and Permanent Injunction by Defendants;

21.2 Plaintiff is authorized to use representatives posing as consumers and Suppliers to (1) Defendants, (2) Defendants' employees, or (3) any entity managed or controlled in whole or in part, directly or indirectly, by any of the Defendants, without the necessity of identification or prior notice; and

21.3 Nothing in this Agreed Final Judgment and Permanent Injunction limits Plaintiff's lawful use of compulsory process to investigate whether any of the Defendants has violated any provision of the law enforced by Plaintiff.

J. Compliance Reports

22. **IT IS FURTHER ORDERED** that, in order that compliance with the provisions of this Agreed Final Judgment and Permanent Injunction may be monitored:

22.1. For a period of one (1) year from the date of entry of this Agreed Final Judgment and Permanent Injunction, Defendant Austin Hilton must notify the Plaintiff of the following:

(a) Any changes in his residence addresses, mailing addresses, and telephone numbers within ten (10) days of the date of such change;

(b) Any changes in his name or use of any aliases or fictitious names within ten (10) days of the date of such change; and

22.2. AUSTIN HILTON d.b.a. FX SUPPLEMENTS.COM and d.b.a. ACAIBERRYMAXX.COM and HILTON HG, LTD. must notify the Plaintiff in writing of any changes in AUSTIN HILTON d.b.a. FX SUPPLEMENTS.COM and

d.b.a. ACAIBERRYMAXX.COM and HILTON HG, LTD. or any business entity that AUSTIN HILTON directly or indirectly control(s), or has any ownership interest in, that may affect compliance obligations arising under this Agreed Final Judgment and Permanent Injunction, including but not limited to a dissolution, assignment, sale, merger, or other action that would result in the emergence of a successor corporation; the creation or dissolution of a subsidiary, parent, or Affiliate that engages in any acts or practices subject to this Agreed Final Judgment and Permanent Injunction; the filing of a bankruptcy petition; or a change in the corporate name or address, at least thirty (30) days prior to such change, **provided** that, with respect to any proposed change in the corporation about which Defendants learn less than thirty (30) days prior to the date such action is to take place, Defendants notify the Plaintiff as soon as is practicable after obtaining such knowledge.

22.3. One hundred eighty (180) days after the date of entry of this Final Judgment and Agreed Permanent Injunction, AUSTIN HILTON d.b.a. FX SUPPLEMENTS.COM and d.b.a. ACAIBERRYMAXX.COM; and HILTON HG, LTD. each must provide a written report to the Plaintiff, sworn to under penalty of perjury, setting forth in detail the manner and form in which they have complied and are complying with this Agreed Final Judgment and Permanent Injunction. This report must include, but not be limited to:

(a) For Individual Defendant Austin Hilton:

(I) The then-current residence address, mailing addresses, and telephone numbers of the Individual Defendant;

(ii) The then-current employment and business addresses and telephone numbers of the Individual Defendant a description of the business activities of each such employer or business, and the title and responsibilities of the Individual Defendant, for each such employer or business; and

(iii) Any other changes required to be reported under Subpart (a) of this Paragraph 22.3.

(iv) A list of the names of the consumers with contact information including the date and the amount of refunds made.

(b) For all Defendants:

(i) A copy of each acknowledgment of receipt of this Order, obtained pursuant to Paragraph 20;

(ii) Any other changes required to be reported under subpart (a) of this paragraph.

22.4. For the purposes of this Agreed Final Judgment and Permanent Injunction, Defendants must, unless otherwise directed by the Plaintiff's authorized representatives, mail all written notifications to the Plaintiff to: Patricia Stein, Assistant Attorney General, Office of the Attorney General, Consumer Protection and Public Health Division, 1412 Main Street, Suite 810, Dallas, Texas 75202.

22.5. For the purposes of the compliance reporting and monitoring required by this Agreed Final Judgment and Permanent Injunction, Plaintiff must, unless directed by the Defendants' authorized representatives, mail all written notifications to the Defendants' counsel: Lane Odom, Berry, Odom & Rabinowitz LLP, 611 9th Ave.,

K. Consumer Redress/Restitution

23. **IN REGARDS TO UNRESOLVED CONSUMER COMPLAINTS, IT IS FURTHER ORDERED THAT** within thirty (30) calendar days from the date of the filing of this fully executed Agreed Final Judgment and Permanent Injunction with this Court, Plaintiff will transmit to Defendants, and request that the Better Business Bureau transmit to Defendants, any outstanding or unresolved consumer complaint in its possession on the date of the filing of this fully executed Agreed Final Judgment and Permanent Injunction with this Court for full and complete resolution as set forth herein. Within six (6) months of the signing of this fully executed Agreed Final Judgment and Permanent Injunction by this Court, Defendants shall satisfy all consumer complaints received by the Plaintiff, Defendants and the Better Business Bureau, prior to the date of the filing of this Agreed Final Judgment and Permanent Injunction, with full and complete refunds as requested in those complaint(s) within six months of Defendants receipt of such outstanding or unresolved complaints.
24. **IT IS FURTHER ORDERED THAT** for a six month period running from the date that this fully executed Agreed Final Judgment and Permanent Injunction was signed by the Court, Defendants shall satisfy all consumer complaints received by the Plaintiff, Defendants and the Better Business Bureau with full and complete refunds as requested in those complaint(s). Plaintiff will transmit to a designated representative of Defendants, and request that the Better Business Bureau transmit to the designated representative of the Defendants, immediately upon receipt, any consumer complaint regarding Defendants for full and complete refunds as requested in those complaint(s) as set forth herein.

25. **IT IS FURTHER ORDERED THAT** within thirty (30) calendar days of the completion of the consumer redress provision set forth in Paragraph 23 above (seven months after the signing of this Agreed Final Judgment and Permanent Injunction), Defendants shall provide a detailed written report to Plaintiff setting forth the resolution of consumer complaints as required therein. The report will state, for each consumer, the name and address of the consumer, the date the complaint was received, the date the complaint was satisfied/paid and the amount of the consumer restitution paid.
26. **IT IS FURTHER ORDERED THAT** the Plaintiff, upon notification to Defendants, shall have the ability to examine any and all documents or materials related to the restitution/redress process.
27. **IT IS FURTHER ORDERED THAT** Defendants shall take down the portions of the current web page at www.acaiberrymaxx.com making the claims regarding acai berry products including, "Flush, 10, 20,30 POUNDS of Waste and Toxins from your body;" "Rachel Ray seems to be in love with Acai Berry for its ability to cleanse your body and help you lose weight;" "#1 Selling acai berry naturally potent in antioxidants, Acai berries have amazing antioxidant posers;" "His trainer recommended using Acai Berry to help trim off this weight and keep his energy levels high;" "In just 2 short months, Brad Pitt was able to drop 20 pounds of straight fat and get down to 5% body fat;" the weight loss comes from the boost in metabolism found in Acai Berry;" "As an added bonus, Acai Berry is known to rejuvenate the skin which leads to less wrinkles all over the body;" "Look Great;" "Feel Great;" "Purify & Detoxify;" "Slows down the aging process;" "Highest antioxidants of any food;" "Enhances sexual desire and performance;" "promotes healthier and younger looking

.skin;" and

You could have POUNDS and POUNDS of excess waste built up in your system right now! This precise buildup can be the cause of noticeable daily lower energy levels, bloating, constipation, aches, and cramps, and even excess gastronal discomfort. This buildup can be a severe breeding ground for harmful bacterias that live inside your body, increasing your chances of potentially harmful health problems. Acai Berry Max can help you Look Better and Feel Better by flushing your body of all that excess waste that is weighting you down. Cleansing your system will give you increased Energy, help you Fight Fatigue, reduce Water Retention, and help you get a Firmer Flatter Midsection.

28. **IT IS FURTHER ORDERED THAT** Defendants shall edit the customer service portion of the current web page at www.myorderhelp.com so as to eliminate the listing of main health benefits of the Acai Berry and other claims with the exception of responses to "How do I cancel my Replenishment Program membership" and "How do I apply for a refund?" This web page will be displayed on the internet for 6 months following the receipt of the Court-signed Agreed Final Judgment and Permanent Injunction.

L. Civil Penalties

29. **IT IS FURTHER ORDERED THAT** Defendants shall pay TWO HUNDRED THOUSAND DOLLARS to the Office of the Attorney General as civil penalties pursuant to DTPA §17.47(c)(1)-(2), subject to paragraph 30 below. It is ordered that Defendants' indebtedness to the State of Texas for civil penalties, identified in this paragraph, for violations of the DTPA constitute a civil fine or penalty to and for a governmental unit and not compensation for actual pecuniary loss.
30. The amounts outlined in section 29 of the AGREED FINAL JUDGMENT AND PERMANENT INJUNCTION will not be collected by the State of Texas based upon

Defendant's stipulation and the court's order that Defendants will be permanently enjoined from selling acai berry products and participating in the deceptive trade practices and violations of the Food Drug and Cosmetic Act and the Texas Food Drug and Cosmetic Act as outlined in this Agreed Final Judgment and Permanent Injunctions.

31. **IT IS FURTHER ORDERED THAT** the State of Texas shall have judgment against Defendants in the amount of SIX THOUSAND TWO HUNDRED FIFTY DOLLARS (\$6,250) for the reimbursement of Plaintiff's attorney's fees and investigative costs for the Office of the Attorney General under TEX. GOVT. CODE §402.006 (c).

M. Payment to the Plaintiff

32. **IT IS FURTHER ORDERED** that Defendants AUSTIN HILTON d.b.a. FX SUPPLEMENTS.COM and d.b.a. ACAIBERRYMAXX.COM; and HILTON HG, LTD. shall make all payments required herein shall be in the form of a certified bank check made payable to the Attorney General of Texas and mailed to the Consumer Protection and Public Health Division, 1412 Main Street, Suite 810, Dallas, Texas 75202 referencing AG No. 093099794.

N. Additional Provisions

33. **IT IS FURTHER ORDERED THAT** this Agreed Final Judgment and Permanent Injunction shall not exempt Defendants from complying with all federal, state, or local laws, regulations, ordinances, or codes, including but not limited to, Chapter 431 of the Texas Health and Safety Code, the Texas Food, Drug and Cosmetic Act, and Chapter 17 of Texas Business and Commerce Code, the Deceptive Trade Practices Act.
34. **IT IS FURTHER ORDERED THAT** this Agreed Final Judgment and Permanent

Injunction does not constitute an approval by the Plaintiff of any of Defendants' advertising, products, promotions and/or practices, and Defendants shall make no representations to the contrary.

35. **IT IS FURTHER ORDERED THAT** this Agreed Final Judgment and Permanent Injunction does not limit the remedies available to the Office of the Attorney General in connection with any future violation of Texas laws or regulations by Defendants.

36. **IT IS FURTHER ORDERED THAT** this Agreed Final Judgment and Permanent Injunction shall not affect the rights of any private party to pursue any remedy or remedies pursuant to the laws of the State of Texas or any federal law. The resolution of this matter does not release or affect in any way the claims of any individual consumer or group of consumers. No claims of any person not a signatory to this Agreed Final Judgment and Permanent Injunction are compromised or released.

37. The clerk of the Court is authorized to issue such writs of execution or other process necessary to collect and enforce this Judgment.

38. The Court retains jurisdiction to enforce this Agreed Final Judgment and Permanent Injunction.

39. All relief not granted herein is hereby denied.

SO ORDERED, this ____ day of _____ 2009.

District Judge

AGREED TO BY:

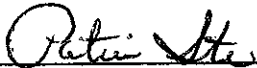
Plaintiff State of Texas

GREG ABBOTT
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Assistant Attorneys General
Consumer Protection and Public Health Division
State Bar No. 00784319
1410 Main St., Suite 810
Dallas, Texas 75202
(214) 969-7639
(214) 969-7615 (fax)

Date: 7/20/09

STIPULATED AND AGREED TO BY:

DEFENDANTS:

Austin Hilton dba Fx Supplements and
Acniberrymaxx.com;
Hilton HG, Ltd.

By: Austin Hilton President
(Title)

Date: 7/15/09

Austin Hilton, Individually

Austin Hilton
AUSTIN HILTON

Date: 7/15/09

APPROVED AS TO FORM ~~AND SUBSCRIBED~~

Counsel for Defendants:

By: LLM

Lane Odom

Berry, Odom & Rabinowitz, LLP

State Bar No: 15202600

611 9th Ave.

Fort Worth, TX 76104

(817) 850-4200

Date: 7/15/09

EXHIBIT A

Website and Customer Service Best Practices

This document is intended to educate you – an employee or agent – as to the best practices that we have incorporated into our web sites, our bottle labels, advertising, package inserts, and best practices that have been incorporated into our customer service operation. After you have gone over this document with your manager, please sign this document to validate that you have received this document and understand all that it details.

General Best Practices

1. Our products do not diagnose, cure, prevent, or mitigate any disease or abnormal condition.
2. Also, our products have not been approved as a drug nor have they been evaluated in any manner by the FDA.
3. We will not make any claims on our website that our product contains better “nutrients”
4. On our web sites, advertising, labels, packaging, and product inserts we will always include a bordered box that has this statement: “These statements have not been evaluated by the Food and Drug Administration. This product is not intended to diagnose, treat, cure, or prevent any disease.”
5. We will always list our name as the distributor of any product we sell on each bottle of product that we ship so that our customers can get in touch with us for any reason.
6. If we use a “free sample” or “free trial offer” we will always clearly and conspicuously disclose the fact that it comes with a negative option billing scenario with it to our customers so that they easily and readily understand and know exactly what is they are getting into when they opt to receive the free sample or free trial offer.
7. We will not use any type of marketing language such as “limited supply available” or “while supplies last” or “time will expire” in our advertising, in our dialogues with our customers, or on our website unless it is actually true.
8. Our shipping and handling charges will always be clearly displayed on our website and in any advertising we use. And, it will be clearly explained to our customers as well.
9. Our product inserts will clearly and conspicuously explain our negative option billing options and these inserts will be separate from any promotional materials.
10. When customers enter a negative option plan, we will let the customer know that the consumer’s account will be automatically charged each month unless the consumer takes an affirmative action to avoid the charges and the steps the consumer must take to avoid further charges.

Returns and Refunds Best Practices

Our refund and return policy will always be disclosed clearly and conspicuously on all our advertising media and it will always need to be clearly explained to our customers so that they completely understand it.

Customer Service Best Practices

It is management's overall goal to offer our customer a positive experience when they contact our company. As such, you will need to be respectful, courteous, prompt, and quickly resolve any matters that our customers bring to your attention. You will need to be able to clearly explain the following points to any customers that you talk to:

1. For autoship orders, our customers will be told the next date when the customers will be automatically charged for future shipments following the initial order unless they cancel their negative billing option with us.
 - a. You will need to be able to clearly explain this to a customer.
 - b. You will also need to explain to the customer that they will need to cancel before their monthly ship date so that they will not incur any charge to their credit card. If a customer has not cancelled the day before their next shipment date their order will ship the following date – again, you will need to be able to clearly explain this to a customer.
2. Our customers can cancel their orders either by contacting us via the email address on the website or by calling us at the toll free number on the website or the toll free number that shows up on their credit card statement.
3. All customer complaints and/or requests for refunds will be quickly and promptly investigated and resolved.

By signing below you acknowledge that you have received, read, and understand all of the points outlined in this document.

Name: _____

Signature: _____

Date Signed: _____